

CHAPTER 63

LEAVE

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1/7/04, see 581—Ch 14]

11—63.1(8A) Attendance. Appointing authorities shall establish the working schedules, regulations, and required hours of work for employees under their direction. All regulations and schedules shall be made known to the affected employees by appointing authorities. All absences of probationary and permanent employees shall be charged to one of the leave categories provided for in this chapter.

11—63.2(8A) Vacation leave.

63.2(1) Nontemporary employees shall earn vacation for continuous state employment as follows:

- a.* Two unscheduled holidays to be added to the vacation accrual each year.
- b.* Two weeks of vacation during the first and through the fourth year of employment.
- c.* Three weeks of vacation during the fifth and through the eleventh year of employment.
- d.* Four weeks of vacation during the twelfth year and through the nineteenth year of employment.
- e.* Four and four-tenths weeks of vacation during the twentieth year and through the twenty-fourth year of employment.
- f.* Five weeks of vacation during the twenty-fifth and all subsequent years of employment.

63.2(2) Vacation is subject to the following conditions:

- a.* Vacation shall be subject to the approval of the appointing authority. The appointing authority shall approve vacation so as to maintain the efficient operation of the agency; take into consideration the vacation preferences and needs of the employee; and make every reasonable effort to provide vacation to prevent any loss of vacation accrual.
- b.* Probationary and permanent part-time employees shall accrue vacation in an amount proportionate to that which would be accrued under full-time employment.
- c.* Vacation shall not accrue during any absence without pay.
- d.* An employee who is transferred, promoted, or demoted from one state agency to another shall be credited with the vacation accrued.
- e.* Employees, including employees who are paid from a pay plan having annual salary rates, who leave state employment for any reason shall be paid, or have payment made according to law, for all accrued vacation. Payment shall be included with the employee's final paycheck and shall be based on the employee's total biweekly regular rate of pay at the time of separation. When other pay is to be included in the calculation, that other pay must have been in effect for at least three pay periods. Vacation shall not be granted after the employee's last day of work.
- f.* An employee may, at the appointing authority's discretion, be required to use all accrued vacation before being granted any leave without pay, except as otherwise provided in these rules.
- g.* Vacation shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's vacation shall not be counted against the employee's accrued vacation.
- h.* In the event of an illness or disability while on vacation, that portion of the vacation spent under the care of a physician shall be switched retroactively to and charged against the employee's accrued sick leave upon satisfactory proof from the physician of the illness or disability and its duration.
- i.* Vacation shall not be used in excess of the amount accrued, and shall not be used until the pay period after it is accrued.
- j.* Vacation shall be cumulative to a maximum of twice the employee's annual rate of accrual, including sick leave conversion. An appointing authority may require an employee to take vacation whenever it would be in the best interests of the agency. The employee shall be given reasonable notice of the appointing authority's decision to require the use of accrued vacation. However, an employee shall not be required to reduce accrued vacation to less than 80 hours.

k. One week of vacation shall be equal to the number of hours in the employee's normal, regular workweek.

l. Any employee who is laid off, or an employee who separated due to qualification for long-term disability benefits or an on-the-job injury or illness and subsequently returns to state employment within two years following the date of separation, shall have previous continuous service and the period of separation counted toward the vacation accrual rate.

m. Reserved.

n. Time spent in military service, within the specified time limits of the military training and service Act, shall be considered continuous service for the purpose of computing vacation accrual, provided the employee returns to state service within 90 calendar days following discharge from military duty. Vacation shall not accrue to an employee while on military leave without pay.

o. If on June 1 an employee has a balance of 160 or more hours of accrued leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid on a separate warrant on the payday which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules. This paragraph applies only to employees not covered by a collective bargaining agreement.

11—63.3(8A) Sick leave with pay. Probationary and permanent full-time employees, except peace officer employees of the department of natural resources and the department of public safety, shall accrue sick leave as set forth in this paragraph. If the employee's accrued sick leave balance is 750 hours or less, the employee shall accrue one and one-half days of sick leave per month, which is 5.538462 hours per pay period. If the employee's accrued sick leave balance is 1500 hours or less but more than 750 hours, the employee shall accrue one day of sick leave per month, which is 3.692308 hours per pay period. If the employee's accrued sick leave balance is more than 1500 hours, the employee shall accrue one-half day of sick leave per month, which is 1.846154 hours per pay period. Peace officer employees of the department of natural resources and department of public safety shall accrue sick leave at the same rate as the rate provided under the State Police Officers Council collective bargaining agreement. The use of sick leave with pay shall be subject to the following conditions:

63.3(1) Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

63.3(2) Sick leave shall not be used as vacation.

63.3(3) Sick leave shall not be granted in excess of the amount accrued.

63.3(4) There is no limit on the accumulation of sick leave. An employee who has accrued at least 240 hours of sick leave may elect to accrue additional vacation in lieu of the normal sick leave accrual. An employee who has made an election to convert sick leave to vacation will be credited with four hours of vacation for each full month when sick leave is not used during that month. A conversion shall not be made if the accrued sick leave is less than 240 hours in the pay period in which the conversion would be made. The conversion of sick leave shall be prorated for employees who are normally scheduled to work less than full-time (40 hours per week). An employee's maximum vacation accrual may be increased under this subrule up to 96 hours.

63.3(5) In all cases when an employee has been absent on sick leave, the employee shall immediately upon return to work submit a statement that the absence was due to illness or other reasons stated in this rule. Where absence exceeds three working days, the reasons for the absence shall be verified by a physician or other authorized practitioner if required by the appointing authority. An appointing authority may require verification for lesser periods of absence and at any time during an absence. In all cases, sick leave shall not be deducted from that accrued until authorized by the appointing authority.

63.3(6) Sick leave shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's sick leave shall not be counted against the employee's accrued sick leave.

63.3(7) Sick leave shall not accrue during any absence without pay.

63.3(8) Probationary and permanent part-time employees shall accrue sick leave in an amount proportionate to that which would be accrued under full-time employment.

63.3(9) An employee who is transferred, promoted, or demoted from one agency to another shall be credited with the sick leave accrued.

63.3(10) All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23 as amended by 2006 Iowa Acts, Senate File 2231, or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee who was separated due to qualification for long-term disability benefits or an on-the-job injury or illness and is reemployed by any state agency within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa Code section 70A.23 as amended by 2006 Iowa Acts, Senate File 2231, and the provisions of 11 IAC 64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

63.3(11) Employees may also use accrued sick leave, not to exceed a total of 40 hours per fiscal year, for the following purposes:

a. When a death occurs in the immediate family;

b. For the temporary care of, or necessary attention to members of the immediate family.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

63.3(12) If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave except that employees shall, upon request, be paid accrued vacation and compensatory leave in a lump sum to prevent delay of long-term disability benefits. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4). Leave without pay for temporary disabilities for medically related reasons shall be in accordance with rule 11—63.5(8A), prior to termination.

11—63.4(8A) Family and Medical Leave Act leave. An employee who has been employed for at least 12 months and who has worked at least 1,250 hours during the previous 12-month period shall be eligible for 12 weeks of family and medical leave per fiscal year in accordance with the federal Family and Medical Leave Act (FMLA), these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. Eligible employees are entitled to FMLA leave subject to the following conditions:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. No more than 12 weeks (480 hours) of family and medical leave shall be granted to an employee in any fiscal year. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous six months. Leave may be for one or more of the following reasons:

a. The birth, adoption or foster placement of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) provided the leave is taken within 12 months following any such birth, adoption or foster placement;

b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

d. A serious health condition that makes an employee incapable of performing any one of the essential functions of the employee's position.

63.4(2) Leave may be taken on an intermittent leave basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph "a" of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph "b," "c" or "d" of subrule 63.4(1) is mandatory if certified by a health care provider.

63.4(3) Use of sick leave shall be in accordance with rule 63.3(8A). When FMLA leave is taken pursuant to paragraph "a," "b" or "c" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

An employee who requests FMLA leave after the birth, adoption or foster placement of a son or daughter must take the leave within 12 months after the event.

When family leave is taken pursuant to paragraph "d" of subrule 63.4(1), an employee must exhaust all paid sick leave and vacation before unpaid leave is granted. An employee may, but is not required to, use accrued compensatory leave for FMLA leave if the employee follows standard request procedures for the leave. Compensatory leave used in this fashion will not reduce the employee's FMLA leave entitlement.

63.4(4) An employee shall submit a written request of forms developed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice within two workdays, or as soon as practicable, after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline to the employee.

The appointing authority shall grant, tentatively grant, delay, or deny leave as FMLA leave within two workdays following notice of the leave or when the appointing authority has a reasonable basis to conclude an absence qualifies as FMLA leave. The appointing authority shall notify the employee using forms developed by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within two workdays.

63.4(5) When the leave involves the employee's serious health condition, the appointing authority may, at the agency's expense, require a second opinion. However, the health care provider chosen by the appointing authority for the second opinion cannot be employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

63.4(6) During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to no more than the same level of benefits upon completion of the necessary insurance applications and other forms required by the department.

63.4(7) Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than the employee would have received had the leave not been taken. If an employee does not return from leave because of the continuation, reoccurrence or onset of a serious health condition, the appointing authority shall require written certification from the health care provider. If the reason for the employee's failure to return is not a certified serious health condition or other circumstances beyond the control of the employee, the state may recover its share of health and dental benefit insurance premiums paid during the period of leave.

63.4(8) The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that:

a. If a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.

b. The employee's pay increase eligibility date shall be adjusted for absences of more than 30 calendar days.

63.4(9) If an employee unequivocally advises the employer that the employee does not intend to return to work, the employee's entitlement to FMLA leave and associated benefits cease. The failure to return to work upon the expiration of FMLA leave may be considered to be job abandonment.

63.4(10) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans With Disabilities Act. The appointing authority shall make reasonable accommodations for a qualified employee with a disability when such accommodations will allow the employee to perform essential job functions unless they pose an undue hardship.

63.4(11) An employee remains a participant in the deferred compensation and dependent care programs while on FMLA leave as authorized by these rules and the policies of the department.

63.4(12) FMLA leave runs concurrently with other leave programs administered by the department to the extent the leave qualifies as FMLA leave.

63.4(13) FMLA leave runs concurrently with a workers' compensation absence when the workers' compensation absence is one that meets the FMLA criteria.

An employee can be offered "restricted light duty," and if such restricted duty is refused, it may result in the loss of workers' compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers' compensation benefits but is still protected by the FMLA.

Employees on workers' compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers' compensation laws and will have no job restoration rights under the FMLA.

63.4(14) Retention of vacation leave. Notwithstanding subrule 63.4(3), non-contract-covered employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, on forms prescribed by the department, to retain up to two weeks (80 hours) of vacation at the onset of the FMLA qualifying event or at any time during the original eligibility period. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

For employees covered by a collective bargaining agreement, the retention of vacation leave will be governed by the collective bargaining agreement.

11—63.5(8A) Leave without pay. A permanent or probationary employee, on written request and written approval by the appointing authority, may be granted leave without pay for any reason deemed satisfactory to the appointing authority, subject to the following conditions:

63.5(1) Leave without pay shall not originally be granted for more than 12 consecutive months. Accrued leave need not be exhausted before leave without pay is granted except that accrued sick leave must be exhausted if the reason for leave without pay is due to a medically related disability. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority except as provided in subrule 63.5(4). On written request, prior to the expiration of a granted leave, the appointing authority may, in writing, grant an extension of the leave without pay. The approved leave without pay extension may not be for more than an additional 12 consecutive months, unless otherwise approved by the director.

63.5(2) Failure by the employee to report back to work on the date specified in the written request shall be considered a voluntary resignation unless otherwise approved by the appointing authority. A written statement accepting the resignation shall be sent to the employee by the appointing authority and a copy sent to the director.

63.5(3) Employees who do not supplement workers' compensation with sick leave, vacation or compensatory leave, and who are kept on the payroll in a nonpay status for more than 30 calendar days, shall be placed on leave without pay for purposes of probationary periods, pay increase eligibility, and other benefits. A written statement to this effect shall be sent to the employee within three days following the action by the appointing authority.

63.5(4) When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted leave, either paid, unpaid or a combination of the two at the discretion of the employee, for at least an eight-week period when the purpose is to provide recovery from a medically related disability except that leave without pay shall not be granted unless accrued sick leave has been exhausted. The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

- a. The employee fails or refuses to supply the requested verification of continued disability.
- b. The verification does not clearly show sufficient continuing reason that would prevent the performance of the employee's regular work duties.
- c. The employee is shown to be performing work which is incompatible with the purpose for which the leave without pay was granted.

63.5(5) If an employee applies for leave under the Family and Medical Leave Act, any leave without pay under the Family and Medical Leave Act shall run concurrently with the leave granted under this rule.

11—63.6(8A) Rights upon return from leave.

63.6(1) An employee who is on approved leave without pay, disaster service volunteer leave, educational leave or leave without pay for military service must notify the agency or institution from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. The appointing authority must approve if an employee on leave without pay, disaster service volunteer leave, or educational leave requests to return to work sooner than the original approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, or educational leave required by the appointing authority, shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

63.6(2) An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to a vacant position in the class held prior to separation or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

11—63.7(8A) Compensatory leave. Compensatory leave accrued in accordance with 11—subrule 53.11(5) shall be granted at the request of the employee whenever possible. However, the appointing authority need not grant a request for compensatory leave if granting the leave would cause an undue disruption.

11—63.8(8A) Holiday leave. Holidays shall be granted in accordance with statutory provisions to employees who are eligible to accrue vacation and sick leave.

63.8(1) The value of a holiday for full-time employees shall be eight hours or the number of hours the employee is scheduled to work on that day, whichever is greater. The value of a holiday that falls on a full-time employee's scheduled day off shall be eight hours. Employees who are normally scheduled to work full-time shall not have their holiday compensation prorated for time on leave without pay during the pay period if the employee meets the conditions of subrule 63.8(3).

Compensation for holidays shall be prorated for employees who are normally scheduled to work less than 80 hours in a pay period. Compensation shall be based on the number of hours in pay status during the pay period in which the holiday falls plus the hours that would normally be scheduled for the holiday which shall be included when determining the number of pro-rata holiday hours.

Leave accrued under Iowa Code section 1C.2 as vacation shall be based on the employee's hours in pay status.

Compensation for holidays under this rule shall be either in pay or compensatory leave. The decision to pay or grant compensatory leave shall be made by the appointing authority.

63.8(2) For employees who work Monday through Friday, a holiday falling on Sunday shall be observed on the following Monday and a holiday falling on Saturday shall be observed on the preceding Friday. For all other employees, the designated holiday shall be observed on the day it occurs.

63.8(3) To be eligible for holiday compensation an employee must be in pay status the last scheduled workday before and the first scheduled workday after the holiday.

An employee who separates from employment and whose last day in pay status precedes a holiday shall not be eligible for payment for that holiday.

63.8(4) When the holiday falls on an overtime-covered employee's scheduled workday, and the employee does not get the day off, the employee shall be compensated for the holiday in accordance with subrule 63.8(1) in addition to a premium rate for time worked. The premium rate shall be paid for hours worked during the 24-hour period from 12 a.m. through 11:59 p.m. on the holiday. However, hours compensated at the premium rate shall not be counted as part of the 40 hours when calculating overtime pay.

When the holiday falls on an overtime-covered employee's day off, the employee shall be compensated for the holiday to a maximum of eight hours.

63.8(5) When an overtime exempt employee is required to work on a holiday, the employee may be compensated for the time worked in addition to regular holiday pay at the discretion of the appointing authority. When granted, compensation shall be at the employee's regular rate of pay for all hours worked.

11—63.9(8A) Military leave.

63.9(1) A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave. Such leave shall include a reasonable amount of time for commuting, for the period of active or inactive state or federal military service without loss of pay, benefits, seniority, or position during the first 30 days of leave. Thereafter, absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, and 38 U.S.C. Sections 4301-4333. Military leave may be utilized for up to 30 days in any calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

63.9(2) A nontemporary employee who is inducted into military service may elect to be placed on leave without pay or be separated and removed from the payroll. The maximum period of accumulated time an employee can be on leave without pay or be separated from employment and still have return rights is five years.

a. The following periods shall be excluded from accumulation to determine return rights of an employee:

(1) Periods in which the employee is required, beyond five years, to complete an initial period of obligated service.

(2) Periods during which a person is unable to get orders releasing the person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of the person.

(3) Periods ordered to be performed under 10 U.S.C. Sections 270, 672(a), 672(g), 673, 673(c), and 688; 14 U.S.C. Sections 331, 332, 359, 360, 367, and 712; and 32 U.S.C. Sections 502(a) and 503.

(4) Periods ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or Congress.

(5) Periods ordered to or retained on active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under the authority of 10 U.S.C. Section 673(b).

(6) Periods ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services or called into federal service as a member of the National Guard under 10 U.S.C. Chapter 15 or under Sections 3500 or 8500.

b. The employer is not required to reemploy an individual if the individual's employment prior to military service was for a brief, nonrecurring period and there was no reasonable expectation that it would continue indefinitely; if reemployment would cause an undue hardship on the employer; if the employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or if the employee has not received an honorable discharge for the employee's period of service in the uniformed services. It is the responsibility of the employer to document such "undue hardship" as well as circumstances that have changed such that reemployment is impossible or unreasonable. When requested, this documentation shall be provided to the former employee.

63.9(3) Nontemporary employees who elect to separate from employment for induction into military service shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when inducted into military service shall continue to receive regular pay and benefits for the first 30 days of leave. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

63.9(4) The employee must notify the agency from which separated or placed on leave without pay of the intent to exercise return rights. If the service is less than 31 days (or for the purpose of taking an examination to determine fitness for service) the employee must report to the employer for reemployment at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours after a time for safe transportation back to the employee's residence. If reporting within that period is impossible or unreasonable through no fault of the employee, the employee shall report to work as soon as possible.

If the period of service was for 31 days or more but less than 181 days, the employee must submit an application to the employer no later than 14 calendar days following completion of service (if submitting an application is impossible or unreasonable through no fault of the employee, then the next calendar day when submission of the application is possible). For service over 180 days, the employee must submit an application with the employer no later than 90 days after completion of the service.

These time period restrictions shall be extended by up to two years if an employee is hospitalized or convalescing from an injury caused by active duty. The two-year period will be extended by the minimum time required to accommodate the circumstances beyond the individual's control which makes reporting within the time limits impossible or unreasonable.

63.9(5) The employer may request that an employee provide the employer with documentation that establishes the timeliness of the application for reemployment and the length and character of uniformed service. If documentation is unavailable, the employer must reemploy the employee until the documentation becomes available. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements for reemployment, the employer may terminate the employment of the person.

63.9(6) An employee with fewer than 91 days of uniformed service must be reemployed promptly in a position that the employee would have attained if continuously employed, unless proved not qualified after reasonable efforts are made by the employer to qualify the employee. If not qualified for that position, the person will be reemployed in the position the person left. These requirements are the same for service of 91 days or more, with the additional option that a position of like seniority, status and pay may be offered. If unqualified after reasonable efforts by the employer to qualify the employee for such a position or the position that was left prior to service, the employee must be reemployed in any other position of lesser status and pay for which the employee is qualified, with full seniority. The position for which the employee is entitled is further governed by rule 11—63.6(8A).

An employee with a service-connected disability who is not qualified for employment in the position the employee would have attained but for military service, or in the position that was left (even after reasonable efforts by the employer to accommodate the disability) must be reemployed promptly in any other position of similar seniority, status, and pay for which qualified or would become qualified with reasonable efforts by the employer. If these efforts fail, reemployment must be in a position which is the nearest approximation consistent with the circumstances of the employee's case.

If two or more employees are entitled to reemployment in the same position or classification, the individual who left first for service in the uniformed services has the higher right to be reemployed first.

63.9(7) Upon reemployment, a person is entitled to the seniority and other benefits the individual would have attained, with reasonable certainty, had that person remained continuously employed. The employee may be required to pay the employee cost, if any, of any benefit to the extent that other employees are required to pay.

63.9(8) Any person taking military leave may use any vacation that is accrued prior to service. Upon reemployment, the employee's accrual rate for vacation shall be the same rate as if the employee had not taken military leave.

63.9(9) An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If beyond 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon reemployment, health and dental insurance coverage will become effective either on the first day of the month following the month the employee was reemployed or the first day of the month in which the employee was reemployed. Coverage under the plans will not have an exclusion or waiting period upon reemployment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

63.9(10) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.

a. Retirement system. No forfeiture of benefits already accrued will be permitted, and there will be no necessity to requalify for participation in a retirement system by reason of absence for military service. To the extent required by law, employers will be required to make, on behalf of returning service members, any contributions to the members' pensions that the employer would have made if the service member had not been absent for military service. Employees will have up to three times the period of service to make up missed contributions (not to exceed five years). The employer is required to make matching contributions only to the extent that the reemployed service member makes the required employee contributions. No interest or penalty will be charged on the employee or employer contribution, nor will the employee be credited with interest that would have been earned on such contributions.

b. FMLA eligibility. In determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the state shall be combined with the months and hours that would have been worked but for the military service during the 12 months prior to the start of the leave requested.

11—63.10(8A) Educational leave. Educational leave, with or without pay, may be granted at the discretion of the appointing authority for the purpose of assisting state employees to develop skills that will improve their ability to perform their present job responsibilities or to provide training and developmental opportunities for employees that will enable the agency to better meet staffing needs. Education financial assistance shall be in accordance with rule 11—64.10(8A).

63.10(1) Length of leave. Educational leave shall be requested for a period not to exceed 12 consecutive months. Accrued vacation or compensatory leave need not be exhausted before educational leave is granted. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority. The appointing authority may grant an extension of the original leave for an additional 12 months.

63.10(2) Selection of applicants. While the selection of applicants is at the discretion of the appointing authority, it is the express policy of the state to offer all qualified employees an equal opportunity to be considered for educational leave within the limitations imposed by agency staffing requirements.

63.10(3) Educational institutions. An employee on educational leave may take course work at any accredited educational institution within the state. Attendance at out-of-state institutions may be approved provided there are geographical or educational considerations which make attendance at institutions within the state impractical.

63.10(4) Notification. The appointing authority shall notify the legislative council and the director of all educational leaves within 15 days following the granting of the leave in a manner prescribed by the director. If the appointing authority fails to notify the legislative council and the director, the expenditure of funds for the educational leave shall not be allowed.

63.10(5) Agency report. The appointing authority shall report to the director and the legislative council, not later than October 1 of each year, the direct and indirect costs to the agency of educational leave granted to employees during the preceding fiscal year in a manner prescribed by the director.

11—63.11(8A) Election leave. An employee who is not covered by the federal Hatch Act and who becomes a candidate for paid, partisan elective office shall, upon the employee's request, be granted leave 30 calendar days before a contested primary, special, or general election. The employee may choose to use accrued vacation or compensatory leave, or leave without pay to cover these periods.

An employee who is elected to a paid, partisan office or appointed to an elective paid, partisan office shall, upon written request to the appointing authority, be granted leave to serve in that office, except where prohibited by federal law. The use of accrued vacation or compensatory leave, or leave without pay to cover this period shall be at the discretion of the employee. The leave provided for in this rule need not exceed six years. An employee shall not be prohibited from returning to employment before the expiration of the period for which the leave was granted.

11—63.12(8A) Court appearances and jury duty. When in obedience to a subpoena, summons, or direction by proper authority, an employee appears as a witness or a jury member in any public or private litigation in which the employee is not a party to the proceedings, the employee shall be entitled to time off during regularly scheduled work hours with regular compensation, provided the employee gives to the appointing authority any payments received for court appearance or jury service, other than reimbursement for necessary travel or personal expenses. If the employee is directed to appear as a witness by the appointing authority, all time spent shall be considered to be worktime.

63.12(1) Hours spent on court or jury leave by an employee outside the employee's scheduled work hours are not subject to this rule, nor shall any payments received for court appearance or jury service be remitted to the appointing authority.

63.12(2) The employee shall notify the appointing authority immediately upon receipt of a subpoena, summons, or direction by proper authority to appear.

63.12(3) An employee may be required to report to work if there will be at least two hours in the workday, following necessary travel time, during which the employee is not needed for jury service or as a witness.

63.12(4) Upon return to work, the employee shall present evidence to the appointing authority of any payments received for court appearance or jury service.

11—63.13(8A) Voting leave. An employee who is eligible to vote in a public election in the state of Iowa may request time off from work with regular pay for a period not to exceed three hours for the purpose of voting. Leave shall be granted only to the extent that the employee's work hours do not allow a period of three consecutive hours outside the employee's scheduled work hours during which the voting polls are open.

A request for voting leave must be made to the appointing authority on or before the employee's last scheduled shift prior to election day. The time to be taken off shall be designated by the appointing authority.

11—63.14(8A) Disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for the purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

11—63.15(8A) Absences due to emergency conditions. When a proper management authority closes a state office or building or directs employees to vacate a state office or building premises, employees may elect to use compensatory leave, vacation, or leave without pay to cover the absence. Employees may, with the approval of the appointing authority, elect to work their scheduled hours even though the state office or building is closed to the general public. Employees may, with the approval of the appointing authority, be permitted to make up lost time within the same workweek.

Employees who are unable to report to work as scheduled or who choose to leave work due to severe weather or other emergency conditions may, with the approval of the appointing authority, use compensatory leave, vacation, or leave without pay to cover the absence.

11—63.16(8A) Particular contracts governing. Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreements shall prevail for the employees covered by those agreements.

11—63.17(8A) Examination and interviewing leave.

63.17(1) Employees may be granted leave to take examinations for positions covered by merit system provisions. Employees may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(2) Employees may be granted the use of paid work time to attend interviews during scheduled work hours for jobs within their agency. For agencies that have statewide operations, the appointing authority may restrict the use of paid time to interviews within the central office, institution, county, region, or district office. A reasonable time limit for interviews may be designated by the appointing authority. Employees may be granted leave for interviews outside the agency, central office, institution, county, region, or district office in which case they may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(3) Appointing authorities shall post and make known to employees the provisions of this rule.

11—63.18(8A) Service on committees, boards, and commissions. State employees who are appointed to serve on committees, boards, commissions, or similar appointments for Iowa state government shall be entitled to regular compensation for such service. Employees shall be paid in accordance with these rules for time spent.

Pursuant to Iowa Code section 70A.1, employees shall not be entitled to additional compensation for such service.

Employees shall have actual and necessary expenses paid.

Employees shall notify the appointing authority at the time of the appointment.

11—63.19(8A) Donated leave for catastrophic illnesses of employees and family members. Employees are eligible to donate or receive donated leave hours for catastrophic illnesses of the employee or an immediate family member. Contributions shall be designated as “donated leave” and shall be subject to the rules, policies and procedures of the department.

63.19(1) Definitions:

“*Catastrophic illness*” means a physical or mental illness or injury of the employee, as certified by a licensed physician, that will result in the inability of the employee to work for more than 30 workdays on a consecutive or intermittent basis; or that will result in the inability of the employee to report to work for more than 30 workdays due to the need to attend to an immediate family member on a consecutive or intermittent basis.

“*Donated leave*” means vacation leave (hours) donated to employees as a monetary benefit only. Recipient employees will not accrue vacation or sick leave benefits on donated leave hours.

“*Employee*” means a full-time or part-time executive branch employee who is eligible to accrue vacation.

“*Immediate family member*” means the employee’s spouse, parent, son, or daughter, as defined in the federal Family and Medical Leave Act.

63.19(2) Program eligibility for employee illness. In order to receive donated leave for a catastrophic illness, an employee must:

- a. Have a catastrophic illness as defined by subrule 63.19(1); and
- b. Have exhausted all paid leave; and
- c. Not be supplementing workers’ compensation to the extent that it exceeds more than 100 percent of the employee’s pay for the employee’s regularly scheduled work hours on a pay-period-by-pay-period basis; and
- d. Not be receiving long-term disability benefits; and
- e. Be approved for and using or have exhausted Family and Medical Leave Act (FMLA) leave hours if eligible; and
- f. Be on approved leave without pay for medical reasons during any hours for which the employee will receive donated leave.

63.19(3) Program eligibility for immediate family member illness. In order to receive donated leave for a catastrophic illness of an immediate family member, the immediate family member must have a catastrophic illness as defined in subrule 63.19(1). The employee must:

- a. Have exhausted all paid leave for which eligible; and
- b. Be approved for and using or have exhausted Family and Medical Leave Act leave hours if eligible; and
- c. Be on approved leave without pay for the medical reasons of an immediate family member during any hours for which the employee will receive donated leave.

63.19(4) Certification requirements. The employee shall submit an application for donated leave on forms developed by the department. Appointing authorities may, at their department’s expense, seek second medical opinions or updates from physicians regarding the status of an employee’s or employee’s immediate family member’s illness or injury. If the employee is receiving FMLA leave, a second opinion must be obtained from a physician who is not regularly employed by the state.

63.19(5) Program requirements.

a. Vacation hours shall be donated in whole-hour increments; however, they may be credited to the recipient in other than whole-hour increments. All of the recipient’s accrued leave must be used before donations will be credited to the recipient. Hours will be credited in increments not to exceed the employee’s regularly scheduled work hours on a pay-period-by-pay-period basis. Recipients will not accrue vacation and sick leave on donated leave hours.

b. Approval of use of donated leave shall be for a period not to exceed one year either on an intermittent or continuous basis for each occurrence.

c. Donated leave shall be irrevocable after it is credited to the recipient. Donated hours not credited to the recipient will not be deducted from the donor's vacation leave balance. Donated leave shall be credited on a first-in/first-out basis.

d. Donated leave for catastrophic illness will not restrict the right to terminate probationary employees. The period of probationary status and the pay increase eligibility date, if in excess of 30 days, will be extended by the amount of time the employee received donated leave.

e. Appointing authorities shall post a form developed by the department indicating that the employee is eligible to receive donated leave and the name of the person to contact for the donation. The appointing authority is not responsible for posting outside the employing department; however, donated leave hours can be received from executive branch employees outside the employing department.

f. Leave without pay rules and procedures shall apply to the following benefits: health, dental, life, and long-term disability insurances; pretax; deferred compensation; holiday pay, sick leave and vacation leave accrual, shift differential pay, longevity pay and cash payments. In addition, employees receiving donated leave for catastrophic illness for themselves or their immediate family member will not be eligible for leadworker pay, extraordinary duty pay or special duty pay. If FMLA leave and donated leave for a catastrophic illness are used concurrently, the state is obligated to pay its share of health and dental insurance premiums. The state also maintains an employee's basic life and long-term disability insurances during periods of FMLA leave.

g. Employees may choose to continue or terminate optional deductions (e.g., miscellaneous insurance, savings bonds, charitable contributions, or credit union deductions) while using donated leave. Mandatory deductions are taken from gross pay first, then optional deductions as funds are available and as authorized by the employee. Union dues deductions will continue as long as the employee has sufficient earnings to cover the dollar amount certified to the employer after deductions for social security, federal taxes, state taxes, retirement, health and dental insurance, and life insurance.

h. Contributions to the employee's dependent care account will not be allowed during a period of leave without pay. Claims will not be paid for dependent care while an employee is on leave without pay.

i. If an employee applies for and is approved to receive long-term disability, the employee may continue to receive leave contributions for up to one year on an intermittent or continuous basis or the effective date of the employee's long-term disability, whichever comes first. Donated leave hours not used are not credited to the recipient and are not deducted from the donor's vacation leave balance.

These rules are intended to implement 2003 Iowa Code Supplement section 8A.413.

[Filed 11/5/70; amended 4/14/71, 5/1/71, 8/18/71, 12/23/71, 5/10/72, 9/13/72, 10/11/72, 8/16/73, 7/26/74, 5/19/75]

[Amendment filed 9/4/75, Notice 7/28/75—published 9/22/75, effective 10/27/75;

emergency amendment filed and effective 10/20/75—published 11/3/75]

[Emergency amendment filed and effective 11/4/75—published 11/3/75]

[Filed 1/19/76, Notice 11/17/75—published 2/9/76, effective 3/15/76]

[Filed 4/23/76, Notice 3/8/76—published 5/17/76, effective 6/21/76]

[Filed 8/2/76, Notice 6/28/76—published 8/9/76, effective 9/13/76]

[Filed 9/16/76, Notice 8/9/76—published 10/6/76, effective 11/10/76]

[Filed 2/1/78, Notice 12/28/77—published 2/22/78, effective 3/29/78]

[Filed 8/2/78, Notice 6/28/78—published 8/23/78, effective 9/27/78]

[Filed 10/17/78, Notice 8/9/78—published 11/15/78, effective 12/20/78]

[Filed 8/1/79, Notice 6/13/79—published 8/22/79, effective 9/26/79]

[Filed 10/12/79, Notice 8/22/79—published 10/31/79, effective 12/5/79]

[Filed 10/26/79, Notice 9/19/79—published 11/14/79, effective 12/20/79]

[Filed 7/6/81, Notice 4/15/81—published 7/22/81, effective 8/26/81]

- [Filed 12/3/82, Notice 10/13/82—published 12/22/82, effective 1/26/83*]
- [Filed emergency 6/29/84—published 7/18/84, effective 7/1/84]
- [Filed 8/24/84, Notice 7/18/84—published 9/12/84, effective 10/17/84]
- [Filed 11/30/84, Notice 9/26/84—published 12/19/84, effective 1/23/85]
- [Filed 3/22/85, Notice 10/24/84—published 4/10/85, effective 5/15/85]
- [Filed 7/26/85, Notice 5/22/85—published 8/14/85, effective 9/18/85]
- [Filed 12/3/85, Notice 10/9/85—published 12/18/85, effective 1/22/86]
- [Filed 12/13/85, Notice 10/9/85—published 1/1/86, effective 2/5/86]
- [Filed 10/17/86, Notice 8/13/86—published 11/5/86, effective 12/10/86]
- [Filed 7/24/87, Notice 6/17/87—published 8/12/87, effective 9/16/87]
- [Filed 2/18/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]
- [Filed 4/29/88, Notice 3/9/88—published 5/18/88, effective 7/1/88]
- [Filed 9/2/88, Notice 6/29/88—published 9/21/88, effective 10/26/88]
- [Filed 10/27/88, Notice 9/21/88—published 11/16/88, effective 12/21/88]
- [Filed 3/29/89, Notice 2/8/89—published 4/19/89, effective 5/26/89]
- [Filed 7/7/89, Notice 5/17/89—published 7/26/89, effective 9/1/89]
- [Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/24/89]
- [Filed 2/1/90, Notice 12/13/89—published 2/21/90, effective 3/30/90]
- [Filed 2/1/91, Notice 12/12/90—published 2/20/91, effective 3/29/91]
- [Filed 5/23/91, Notice 4/17/91—published 6/12/91, effective 7/19/91]
- [Filed 3/26/93, Notice 2/17/93—published 4/14/93, effective 5/19/93]
- [Filed emergency 8/5/93—published 9/1/93, effective 8/5/93]
- [Filed emergency 7/18/95—published 8/16/95, effective 7/18/95]
- [Filed 12/12/96, Notice 10/23/96—published 1/15/97, effective 2/19/97]
- [Filed 8/12/99, Notice 6/16/99—published 9/8/99, effective 10/13/99]
- [Filed emergency 6/21/01 after Notice 5/16/01—published 7/11/01, effective 6/22/01]
- [Filed 12/17/03, Notice 11/12/03—published 1/7/04, effective 2/11/04]
- [Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
- [Filed 5/20/05, Notice 4/13/05—published 6/22/05, effective 7/27/05]
- [Filed without Notice 5/5/06—published 5/24/06, effective 7/1/06]

*Effective date of subrule 14.2(12) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.